In the High Court of Uttaranchal, at Nainital.

F.A. No. 727/2001
(Old No. 523 of 1999)

1- Ajay Dhaka S/o B.S. Dhaka,
2- Master Rahul Dhaka, minor through B.S. Dhaka, father and natural guardian R/o T-19, Yamuna Colony Dehradun ....Appellants.

Versus

State of Uttar Pradesh through Collector, Haridwar ... Respondent.

Sri Sharad Sharma, leaned counsel for the appellants.
Smt. Beena Pandey, learned Standing Counsel for respondent.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: 30-6-2006

This appeal has been preferred for enhancement of compensation against the judgment and order dated 30-1-1992, passed by Additional District Judge, Roorkee, Haridwar in Land Acquisition Case No. 130/1989 Ajay Dhaka and another versus Collector, Haridwar, awarding compensation of Rs. 2,73,320/- along with interest @ 9% per annum from 23-1-1988 unto one year and thereafter @ 15% per annum till the date of depositing the compensation in the court. The claimants were also awarded additional amount @ 12% on the compensation amount U/S 23 of the L.A. Act and solatium @ 30%

2- The appeal is pressed only on one point that the compensation of trees has been awarded on the basis of wrong calculation of the trees. According to the appellant there about 10500 trees in an area measuring 10 Bigha, 2 Biswa and 11 Biswansi. The trial court has relied on the report dated 7-3-1988

submitted by the Divisional Director of the Social Forestry, in which it has been reported that the number of trees is 8600. The report is paper No. 47-C and 48-C on the record. The perusal of the report reveals that the inspection was made on 14-3-1988 while the report is dated 7-3-1988. The letter 47-C has been sent in reference to the letter of SLAO dated 16-3-1988, therefore, this report cannot be a reliable piece of evidence. Reference was made on 16-3-1988 and the report was sent on 7-3-1988 which is earlier to the inspection dated 14-3-1988, and after the reference as well as the submission of the report both. There is no other document to rebut the assertion of the claimant/appellant that there existed 10500 trees on the day of the acquisition of the land as claimed before the SLAO and before the Reference Court.

3- We have perused the report dated 7-3-1988, on the basis of which the SLAO and the Reference Court have awarded compensation computing the number of the trees to be 7216, while the report paper No. 48-C indicate that there are 7346 trees of 0 to 10 diameter, 151 trees of 10 to 20 diameter, 2 trees of 20 to 30 diameter and open tree of 50 of 60 diameter, the total of which comes to 8600. But both the authorities below calculated the compensation of 7216 trees. Hence the authorities below have erred in appreciating the evidence on record adduced on behalf of the State and awarded lesser compensation to the appellants. On the other hand learned counsel for the appellant demonstrated that he has claimed compensation for minimum number of trees of 10500 and his claim was proved by the claimant in his oral statement made before the SLAO and the Reference Court. Therefore the judgment passed by the SLAO as well as the

Reference Court on this point cannot be sustained and are liable to be set aside.

4- We find that no convincing evidence has been filed on behalf of the appellant to support his claim that there are 10500 trees. Any how there is report paper No. 48-C filed on behalf of the State itself which shows that 8600 trees were there on the acquired land. This number of trees can safely be taken for award of cost of trees to the claimant/appellant. In our opinion considering the width and length of trees and number of trees mentioned dint he report dated 7-3-1988, Rs. 30/- cost of per tree is just and proper. In this way the cost of the trees comes to 8600 x 30= Rs. 2,58,000/-, out of which the claimant/appellants have received Rs. 72,160/- and after deducting this amount the valuation of the trees comes to Rs. 1,85,840/-. The Reference Court has warded Rs. 1,44,320/- as cost of trees, which has further been received by the claimant/appellants and now a sum of Rs. 41,520/- is to be paid to the claimant/appellants.

5- In view of the foregoing discussion we allow the appeal in part modifying the impugned judgment and award dated 30-1-1992 passed by the reference Court upto the extent that a sum of Rs. 41,520/- more shall be paid to the claimant/appellants by the respondent along with interest @ 9% per annum on the aforesaid enhanced amount of Rs. 41,520/- from the date of acquisition of the land in question. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

ISB